

Adjourned Hearing Date: February 13, 2013
Adjourned Hearing Time: 10:00 A.M. EST
Adjourned Objection Deadline: December 3, 2012

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

.....	X	
SECURITIES INVESTOR PROTECTION	:	
CORPORATION,	:	
	:	
Plaintiff,	:	Adv. Pro. No. 08-1789 (BRL)
	:	
v.	:	SIPA LIQUIDATION
	:	
BERNARD L. MADOFF INVESTMENT	:	(substantively consolidated)
SECURITIES LLC,	:	
	:	
Defendant.	:	
.....	X	
In re:	:	
	:	
BERNARD L. MADOFF,	:	
	:	
Debtor.	:	
.....	X	

**CUSTOMERS' BRIEF OPPOSING TRUSTEE'S MOTION
FOR AN ORDER REJECTING AN INFLATION
ADJUSTMENT TO THE CALCULATION OF "NET EQUITY"**

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This brief is submitted on behalf of a group of defrauded Madoff customers identified on the attached schedule A (collectively, the “Customers”).¹ The Customers oppose the Trustee’s request that this Court approve his decision to ignore the effect of inflation in determining the “net equity” of customer claims (the “Trustee’s Motion”).

SUMMARY OF ARGUMENT

The Second Circuit explicitly left open the issue raised by the Trustee’s Motion: whether a customer’s “net equity” should be adjusted to account for inflation. The Trustee and SIPC assert that no such adjustment is legally permitted. They also argue that ignoring inflation is more equitable than applying to all claims a universal, widely accepted inflation adjustment (or “constant dollar” adjustment, as phrased by the SEC) that allows fair treatment across the generations of defrauded Madoff victims.

The Trustee and SIPC are wrong, both on the equities and the law. A method that adjusts “net equity” to account for inflation – as was urged by the SEC nearly three years ago – is demonstrably fairer to customers and is more consistent with SIPA and its protective aims than

¹ The Customers’ fact patterns vary. Some have filed claims in the SIPA proceeding. Of those customers, some have challenged the Trustee’s determination of their “net equity.” Some Customers have filed no claims but are defendants in the Trustee’s fraudulent transfer suits. All have standing to challenge the Trustee’s Motion because an adverse determination would significantly and adversely affect their economic interests. *See, e.g.*, Bankruptcy Rule 9014(a) (requiring that “reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought.”).

Additionally, in the Notice of Trustee’s Determination of Claim, which the Trustee sent to all customer/claimants, the Trustee represented that if the courts “determine that the Trustee is incorrect in his interpretation of ‘net equity’ . . . the trustee will be bound by that order and will apply it retroactively to all previously determined customer claims. . . .” A copy of a representative Notice is annexed as Exhibit A to the accompanying declaration of Gregory Schwed filed in support of this brief (the “Schwed Decl.”).

Similarly, Customers who have not filed claims but are targets of the Trustee’s fraudulent transfer lawsuits have standing because the Trustee asserts that the defendants’ fraudulent transfer exposure is equal to their unadjusted “net equity” calculation. The Customers dispute the Trustee’s legal analysis, and certain avoidance defendant Customers are filing with this Court a motion requesting intervention under Bankruptcy Rule 2018(a) in an effort to be heard on this important matter.

the method proposed by the Trustee and SIPC. The Trustee's unadjusted method arbitrarily penalizes early customers for no reason other than their misfortune in entrusting their money to Madoff many years before the fraud unraveled. An inflation adjustment would put all customers on equal economic footing by modifying the Trustee's "net investment" method to conform to unquestioned economic reality and common sense. *See* Point 1(B) below.

The Second Circuit has held that if the Trustee's method is "clearly inferior" to a competing method, the Trustee's approach should be rejected. Here, the Trustee's method, which ignores economic reality, is "clearly inferior" to a method that makes an adjustment that takes into account the effect of inflation over time. *See* Point 1 below. Moreover, the Trustee admits that his expert has already largely completed the calculations necessary to implement to an inflation adjustment. Accordingly, such an adjustment seemingly could be given effect without meaningful expense or delay. *See* Point 2(D), below. The Trustee's refusal to implement an inflation adjustment is thus an abuse of his limited discretion and should be given no deference.

The Trustee claims that the law prohibits a "constant dollar" adjustment. It plainly does not. As further described below, SIPA's definition of "net equity" is silent on the issue of an inflation adjustment and does not accommodate a decades-long fraudulent scheme of this nature. *See* Point 2(A). The Customers are aware of no court that has ruled on the fair treatment of defrauded broker-dealer customers where the losses have been spread over such a long period.

In such uncharted waters, courts construing other SIPA provisions have been largely guided by general legislative purpose, equitable considerations and common sense. This type of interstitial interpretation was deployed by the Second Circuit in both the *Net Equity Decision* and *New Times* (both defined below). A comparable level of judicial pragmatism is required here to

reach the fair result: an inflation adjustment to ensure that customers with early and later deposits are treated equally.

The Customers ask this Court (1) to determine that the calculation of “net equity” must be adjusted for inflation (or deflation, as the case may be) and (2) to direct the Trustee, SIPC and (if the SEC desires to participate) the SEC to confer with the Customers regarding the specific protocols to be used in adjusting the “net equity” calculation for inflation. The parties should be required to report to the Court on the status of their efforts to reach agreement on those issues and, if agreement cannot be reached, the matter should be determined after further proceedings.

ARGUMENT

1. The Trustee’s unadjusted method for calculating net equity is “clearly inferior” to an inflation adjusted calculation method and thus should be rejected as an abuse of the Trustee’s limited discretion.

The Trustee’s and SIPC’s views on “net equity” are entitled to no deference in these circumstances and should be rejected. In *In re Bernard L Madoff Inv. Secs. LLC*, the Second Circuit stated that “in many circumstances a SIPC trustee may, and should, exercise some discretion in determining what method, or combination of methods, will best measure ‘net equity.’ We have no reason to doubt that a reviewing court could and should accord a degree of deference to such exercise of discretion so long as the method chosen by the trustee allocates ‘net equity’ among the competing claimants in a manner that is not clearly inferior to other methods under consideration.” 654 F.3d 229, 238 at n.7 (2d Cir. 2011) (the “*Net Equity Decision*”) (internal quotations omitted) (emphasis added). The Second Circuit further explained that the views of “SIPC are entitled to respect, but only to the extent that [they have] the power to persuade.” *Id.* at 234. (Internal citations omitted).

Here, the Trustee’s unadjusted method for calculating net equity is “clearly inferior” to one that incorporates an inflation adjustment because it ignores the economic reality that money

generally loses value over time. A dollar deposited with Bernard L. Madoff Investment Securities (“Madoff Securities”) many years ago was unquestionably worth more than an inflation-eroded dollar deposited just prior to the bankruptcy filing.

The time value of money has been understood and incorporated into financial transactions for centuries, and the concept has long been expressly recognized in this Circuit. *See, e.g., In re Murel Holding Corp.*, 75 F.2d 941, 942 (2d Cir. 1935) (“[P]ayment ten years hence is not generally the equivalent of payment now.”) (Hand, J.). The SEC has repeatedly urged an inflation adjustment in this very case. Yet the Trustee and SIPC ask this Court to ignore this fundamental economic truth. *See, e.g., United States v. Will*, 449 U.S. 200, 220 (1980) (acknowledging the “ravages of inflation”). The Trustee’s method, which uses only nominal, unadjusted numbers, does not take into account the corrosive effect of inflation on an early customer’s “net equity” computation. The Trustee’s unadjusted approach is thus “clearly inferior” to a uniformly applied inflation adjustment that would treat all generations of defrauded Madoff customers equally and fairly. SIPC’s arguments lack the power to persuade for these same reasons.

A. The SEC has unequivocally supported a “constant dollar” adjustment – a direction that SIPC, statutorily subordinate to the SEC, has inexplicably failed to follow.

Nearly three years ago, on December 9, 2009, the Deputy Solicitor of the SEC appeared before the House Subcommittee on Capital Markets to present the SEC’s view on calculating Madoff customers’ “net equity.” The SEC stated that while it preferred the Trustee’s cash-in/cash-out method over the only competing method then being litigated (the “final account statement method”), the Trustee’s method should be modified to account for inflation. The SEC’s rationale is comprehensive and persuasive, so it is quoted in full:

“While the final account statement approach favors earlier customers at the expense of later customers, the SEC is also sensitive to the corresponding fairness concerns under the cash-in/cash-out method. That method of calculating net equity favors later customers at the expense of earlier customers by treating a dollar invested in 1987 as having the same value as a dollar invested in 2007. To illustrate this concern, assume that one claimant invested \$100 in the Madoff firm in 1987, a second claimant invested \$100 in 2007, and neither withdrew any funds from their accounts. Under the cash-in/cash-out approach advocated by SIPC and the Trustee, the net equity of both claimants would be \$100. But because, in basic economic terms, \$100 in 1987 dollars is worth \$183 in 2007 dollars (<http://data.bls.gov/cgi-bin/cpicalc.pl>), the claimant who invested \$100 in Madoff’s firm 21 years before the firm collapsed has suffered a much more substantial real-world loss than a claimant who invested \$100 only one year before the collapse.

“In the SEC’s view, to achieve a fair and economically accurate allocation among Madoff customers who invested and withdrew funds in different historical periods, it is appropriate to convert the dollars invested into “time-equivalent” or constant dollars. This constant-dollar approach is rooted in the classic economic concept of the time value of money and will result in greater fairness across different generations of Madoff investors – in effect, treating early investors and later investors alike in terms of the real economic value of their investments.

“The issue of calculating net equity in constant dollars has not arisen before in SIPA cases, probably because many Ponzi-type schemes are of relatively short duration, and the inequity among those who invested at different points in time is less striking. But the Madoff fraud – which lasted for 20-plus years – puts this issue into stark relief. In light of the silence of SIPA regarding the payment of interest and of a Court of Appeals decision [*SIPC v. Ambassador Church Fin./Dev. Group*, 788 F.2d 1208 (6th Cir. 1986) (*see* Point 2(B) below)] suggesting, in a distinct factual circumstance, that interest may not be applied to customer claims under SIPA, the Commission considered whether calculating net equity in constant dollars would be inconsistent with that case. Under the facts of this case, the Commission believes that the use of constant dollars can be distinguished from the payment of interest discussed in that Sixth Circuit case and that the best reading of SIPA and the cases interpreting it is that net equity here should be calculated in constant dollars.” SEC Policy Statement at 8 (Schwed Decl. Ex. B), *also found at Madoff Ponzi Scheme, Capital Markets, Ins. & Gov’t Sponsored Enters., House Fin. Servs.*, 2009 WL 4647561 at *9-10 (Dec. 9, 2009) (emphasis added).

Soon thereafter, the SEC filed with this Court a Memorandum similarly urging for the adoption of a “constant dollar” adjustment to net equity:

“The Commission believes . . . that in determining customer claims under the cash-in/cash-out method, the amount of the payment should be calculated in

constant dollars by adjusting for the effects of inflation (or deflation). Because customers will be receiving *pro rata* distribution from the limited pool of assets recovered for the [Madoff Securities] estate, calculating claims in constant dollars treats all investors fairly by taking into account the economic reality that a dollar invested in 2008 has different value than a dollar invested twenty years earlier.” SEC Memorandum on Net Equity issue (Dec.11, 2009) Docket No. 1052 at 1.

The SEC (which, as explained below, has supervisory authority over SIPC) is thus on record before Congress and this Court as vigorously advocating the major policy and fairness arguments for a “constant dollar” or inflation adjustment – a view that the SEC also urged in the Second Circuit. *See In re Bernard L. Madoff Inv. Sec. LLC*, No. 10-2378, Docket No. 296, at 17. Yet in their collective 60 pages of briefing, the Trustee and SIPC fail even to mention the SEC’s persuasive analysis, let alone explain why it should be rejected.

SIPC’s failure to recommend that the Trustee follow the SEC’s “constant dollar” approach is particularly odd, given SIPC’s statutory subservience to the SEC. The Second Circuit has previously reminded SIPC of this hierarchy: “SIPA invests the SEC with plenary authority to supervise the SIPC,” and “SIPA drafters seem to have anticipated substantial and vigorous oversight of SIPC by the SEC.” *In re New Times Sec. Serv., Inc.*, 371 F.3d 68, 77 (2d Cir. 2005) (“*New Times*”) (citations omitted) (rejecting SIPC interpretation limiting customer protection, in favor of more expansive SEC statutory reading).²

² The Trustee and SIPC may argue that the SEC’s position is somehow tainted by a controversy concerning an alleged conflict of interest of the SEC’s former general counsel, David Becker. Yet as of this writing, over a year after that issue became public, the SEC has not revoked or modified its unequivocal support of a “constant dollar” adjustment to account for inflation. Whatever Mr. Becker’s role in supporting an inflation adjustment, the SEC’s 2009-2010 statements remain persuasive and almost certainly constituted the considered view of the SEC as a whole. A widely publicized September 22, 2011 letter to Congress (Schwed Decl., Ex. C) signed by 52 signatories – a virtual “Who’s Who” of the private securities bar, many of whom had held major SEC positions – defended Mr. Becker’s integrity and legal acuity, calling him “one of the most talented lawyers of his generation.” The letter then opined that the SEC’s support of the “constant dollar” modification was a true consensus view in the SEC: “Finally, many of us are former SEC senior officers or staff, and based on our many years of experience at and with the agency, we can affirm that any significant SEC decision receives broad consideration. Sometimes 20 or more sets of eyes will fall on a single recommendation memo, and decisions by the five SEC commissioners are usually made in a large meeting room that is packed with very experienced and intelligent senior and junior staff members. In that

(footnote continued on next page)

B. Fairness requires an inflation adjustment to “net equity.”

(i) Courts routinely acknowledge that equity requires adjustment for inflation– as do financiers, economists, governmental policy makers, commentators and ordinary people.

Concern about the “ravages of inflation” goes back to the founding of this country. *See Will*, 449 U.S. at 220. As Alexander Hamilton explained over two centuries ago during the debate about protecting federal judges’ salaries from decrease: “It will readily be understood that the fluctuations in the value of money, and in the state of society, rendered a fixed rate of compensation [of judges] in the Constitution inadmissible. What might be extravagant today might in half a century become penurious and inadequate.” *Id.* More recently, the Supreme Court has explicitly recognized, in a bankruptcy cram-down context, that creditors must receive compensation for “the time value of their money.” *Till v. SCS Credit Corp.*, 541 U.S. 465, 467 (2004).

Within this jurisdiction, the impact of inflation and time value of money has also long been recognized as a critical component of fairness. *See, e.g., Proctor & Gamble Distrib. Co. v. Sherman*, 2 F.2d 165, 166 (S.D.N.Y. 1924) (Hand, J.) (“Whatever may have been our archaic [notions] about interest, in modern financial communities a dollar today is worth more than a dollar next year, and to ignore the interval as immaterial is to contradict well-settled beliefs about value.”); *see also Oliveri v. Delta S.S. Lines, Inc.*, 849 F.2d 742, 746 (2d Cir. 1988) (“[A] dollar received in the future will almost surely have less purchasing power than a dollar has today”).

Even apart from its endorsement of “constant dollar” in this case, the SEC has long recognized the principle of the time value of money. *See* Staff Accounting Bulletin No. 92, 17

environment, any views perceived as being contrary to the public interest are quickly and vigorously challenged and ultimately disregarded.” *Id.* at 3.

C.F.R. Part 211, available at 58 F.R. 32843-01, 1993 WL 199253 (F.R.) (June 14, 1993)

(discussing the appropriate discount rate for estimating environmental or product liabilities; rationale for applying discount rate is to account for time value of money).

FINRA, in straight-talking guidance to market participants, also acknowledges the concept: “Inflation means your money loses value over time. It’s the reason that a dollar in 1950 could buy a lot more than a dollar in 2010. The calculation of return that takes inflation into account is called real return. You’ll also see inflation-adjusted dollars called real dollars.”

See FINRA, Smart Investing: Evaluating Performance <http://www.finra.org/investors/smartinvesting/advancedinvesting/evaluatingperformance/> (last visited December 3, 2012) (emphasis added).

The Government Accountability Office (the investigative arm of Congress charged with examining matters relating to the receipt and payment of public funds) similarly recognized the principle in its recent Madoff-related Report. See GAO Report of Sept. 2012, Secs. Investor Prot. Corp., Customer Outcomes in the Madoff Liquidation Proceeding, GAO 12-991, at 49 (Sept. 13, 2012) (“Even if the government surrenders tax revenue as Madoff customers realize tax relief, the U.S. government collected and had use of tax receipts for multiple years. . . . Given the time value of money, and difficulty in capitalizing on benefits, this is advantageous to the government, tax practitioners and others[.]”); see also Sinclair & McPherson, *The Sad Tale of Multiple Overlapping Transfers: Part IV*, 29 Am. Bankr. Inst. J. 18, 70 (May 2010) (“[I]t would be inexcusable to adopt a supposedly equitable formula – where investors who have invested money with Madoff for years, and some for decades – and to ignore the time value of money.” To ignore inflation “over decades does no equity whatsoever.”)

The foregoing authorities largely distill common sense, because the underlying concept is simple to grasp and widely appreciated. Even the economically unsophisticated know full well that \$10 was worth more thirty years ago than it is today.³

(ii) **The Trustee and SIPC are wrong in their central thesis that equity always requires taking money from so-called “net winners” to give to so-called “net losers” who invested decades later.**

The Trustee openly rejects the fundamental economic and equitable truth that money loses value over time as a result of inflation. He proclaims: “Equity also does not support recalculating net equity claims to include Time-Based Damages.” Tr. Mem. at 2. The Trustee continues:

“Until there are sufficient recoveries to return all principal losses to customers, revising the method by which net equity is calculated frustrates that objective. The effect of including Time-Based Damages as part of the net equity claim is to take funds currently earmarked to repay net losers who have not yet recovered their principal and shift those funds to pay those who have already received all their principal as well as fictitious profits.” *Id.*

This statement does not stand up to even cursory analysis. The supposedly dire example identified by the Trustee – a possible diversion of funds from nominal “net losers” to nominal “net winners” – is in fact exactly what should happen in appropriate cases.

Take, for example, a hypothetical Customer A, who deposited \$1 million in 1988 and withdrew \$1,050,000 twenty years later, just before the 2008 bankruptcy filing. Customer B, in

³ The Customers are not currently submitting expert reports or testimony because the appropriateness and fairness of an inflation adjustment are concepts of which judicial notice can be taken. *See* Federal Rule of Evidence 201(b) (court may take judicial notice of facts that are “generally known within the trial court’s territorial jurisdiction” or that are capable of accurate and ready determination by resort to “sources whose accuracy cannot be reasonably questioned.”). Also, the Scheduling Order on this issue provided only that those opposing the Trustee’s Motion “shall file a memorandum of law in opposition” and makes no provision for evidentiary proceedings on the scheduled hearing date. September 5, 2012 Scheduling Order [Docket No. 5022 at 3]. The Order also provided that “[a]ny other issues raised by Objecting Claimants will be resolved in subsequently scheduled hearings.” *Id.* at 4. If the Court desires expert testimony or reports or additional evidence on the issues of whether an inflation adjustment is appropriate and how such an adjustment would be given effect, the Customers reserve the right to make such submissions at such a subsequent hearing.

contrast, deposited \$1 million in late November 2008 and a week later withdrew \$950,000. In the Trustee's tunnel-vision view, Customer A is a \$50,000 so-called "net winner" and is liable for \$50,000 in a clawback suit. Customer B is a \$50,000 so-called "net loser" and thus has a \$50,000 net equity claim. Further assume, for simplicity of analysis, that these two are the only customers, so the system is a "zero sum game" – that is, whatever is given to one customer is taken away from the other. (The Trustee indeed asserts that any reallocation would be a "zero sum game" on page 25 of the Tr. Mem.)⁴

By the Trustee's logic, the Trustee would sue Customer A for a \$50,000 fraudulent transfer and redistribute that \$50,000 to Customer B. Both would then end up with exactly the same nominal amount: \$1 million. In reality, though, Customer A has of course been far more injured by the Madoff fraud than Customer B. To be sure, Customer B lost \$50,000, or 5%. But even if Customer A gets to keep the \$50,000 in excess of his deposit, Customer A has suffered a far greater real economic loss. The \$1,050,000 Customer A got back in inflation-ravaged 2008 dollars is worth little more than one-half (in fact, approximately \$575,000) of the \$1 million invested in 1988, twenty years earlier. *See* Bureau of Labor Statistics CPI Inflation Calculator <http://data.bls.gov/cgi-bin/cpicalc.pl> (last visited December 3, 2012). Thus, in the real world where money loses value over time – not some fanciful Platonic world dreamed up by the Trustee and SIPC – Customer A has suffered over a 42% real loss on his or her investment, compared to a mere 5% loss for Customer B. Yet the Trustee would wrest money from

⁴ The Madoff Securities case is not truly a zero sum game. If a constant dollar approach is adopted, SIPC likely will need to make additional payments to Madoff Securities' victims. While SIPC payments are technically called "advances," if, as may be the case here, the estate ultimately lacks sufficient funds to pay net equity claims in full, those advances will not be fully repaid to SIPC. 15 U.S.C. § 78fff-2(c). In that event, any additional SIPC advances would increase the pot of funds to be paid to Madoff victims at no overall expense to customers – a desirable outcome for Madoff's victims and an outcome that is consistent with the customer protection aims of SIPA. *See* Point 2(C) below.

Customer A through a fraudulent transfer suit and give the proceeds to Customer B. Far from achieving equity, the approach urged by the Trustee and SIPC would compound the unfairness and harm that has been visited on Customer A as a result of Madoff's fraud.

SIPC devotes an entire subsection to the claim that "Time-Based Damages Do Not Achieve Equity." SIPC Mem. at Point V(2). The effort badly fails. The centerpiece of SIPC's fairness argument is an example showing how a constant dollar adjustment would significantly increase the "net equity" claim of a very early hypothetical customer. And why, in SIPC's view, is that unfair? Because the adjustment could end up increasing the claims of early customers who happen to be "insiders," "wrongdoers," and "Madoff family member[s]." *Id.* at 28-29.

This argument is a clumsy attempt to provoke judicial indignation by claiming that an inflation adjustment must be wrong because it could possibly benefit some malefactors. The problems with this concept are many. First, the Customers here are decidedly not "insiders," "wrongdoers," or "Madoff family members." Like the vast majority of Madoff's victims, the Customers here deposited their funds with Madoff Securities in good faith, and the Trustee concedes that they had no knowledge of or involvement in the fraud.

Moreover, in the federal court-supervised bankruptcy setting, wrongdoers and insiders do not benefit. SIPC admits as much in its own brief: "Because the claimant is an insider, the Trustee would have many defenses as to why the insider should be barred from any recovery whatsoever." *Id.* at n.11. Those defenses include equitable subordination, lack of good faith, recharacterization, unclean hands and others. Accordingly, this imaginary parade of miscreants walking away with inflated claims would simply not happen.

Finally, SIPC's argument could impugn any fair-minded reform, simply by claiming that it might benefit a handful of wrongdoers. SIPC's argument is as fatuous as opposing cost-of-living increases in Social Security because some recipients might not be nice people.

The bottom line is that the Trustee's and SIPC's repeatedly invoked shibboleth – that it would be unjust to give any customer a net equity claim for more than principal before all customers have been paid all their principal – is just wrong. Their contention depends entirely on the misguided premise that the effects of inflation have no relevance in deciding what is just and fair. The Trustee's central argument is thus belied not just by common sense but by countless pronouncements from the bench and the worlds of finance, business and government.

2. The Trustee's and SIPC's other arguments in support of an unadjusted calculation of net equity do not withstand scrutiny, further demonstrating that their approach is "clearly inferior."

The Trustee and SIPC argue that an inflation adjustment is barred by SIPA and the case law, and that such an adjustment would reduce the Trustee's fraudulent transfer recoveries and generate additional cost and delay. These arguments are unpersuasive. In fact, SIPA's text and the customer-protection purpose support an inflation adjustment, and the Trustee's practical and financial arguments are groundless.

A. SIPA's text and purpose support an inflation adjustment to "net equity."

- (i) Since SIPA's definition of "net equity" does not expressly deal with a decades-long fraud, this Court and other judges in this case have looked to the statute's equitable and customer-protection purposes.**

The Trustee and SIPC argue that a "constant dollar" adjustment is somehow precluded by SIPA. It is not. In fact, SIPA is silent on how to address a decades-long fraudulent scheme

where it is alleged that no securities are actually purchased.⁵ “Net equity” is defined as the dollar amount of the account, as determined by calculating “the sum which would have been owed by the debtor to such customer if the debtor had liquidated . . . all securities positions of such customer . . . [less any loans taken by the customer].” 15 U.S.C. § 78lll(11) (emphasis added). As noted by this Court and the Second Circuit, this statutory language cannot be applied cleanly here because, despite what any customer statement showed, the Trustee has alleged that no actual securities were purchased. As a result, in its prior decisions on net equity, both this Court and the Second Circuit necessarily expanded the analysis beyond the relatively unhelpful “plain language.”

It was in this context that the Second Circuit recognized, as discussed above, that the Trustee has discretion to implement a variety of approaches to calculating “net equity,” so long as that approach is not “clearly inferior” to a competing approach. *Net Equity Decision*, 654 F.3d at 238 n.7. The narrow and inflexible interpretation of SIPA that is being urged by the Trustee and SIPC is inconsistent with this limited discretion.

The Second Circuit also held that “the statutory language does not prescribe a single means of calculating ‘net equity’ that applies in the numerous circumstances that may arise in a SIPA liquidation.” *Id.* at 235. The Second Circuit further stated that “[t]he two competing methods of calculating ‘net equity’ proposed by the parties to this litigation are the only two methods at issue here. We do not hold that they are the only possible approaches to calculation of ‘net equity’ under SIPA.” *Id.* at n.5.

⁵ This statutory gap is not surprising. SIPA was enacted in 1970, following a series of conventional brokerage house liquidations, receiverships and bankruptcies that resulted from a serious business contraction disrupting the industry in 1969-1970. *Annotation. Validity, Construction, and Application of Securities Investor Protection Act of 1970*, 23 A.L.R. Fed. 157, 179 (1975). Large-scale, long-term Ponzi-type frauds did not surface until several decades later: Bayou (2005); Stanford, Madoff (2008); Petters, WG Trading (Westridge) (2009).

These judicial pronouncements clearly indicate that SIPA should be applied flexibly, consistent with the fundamental notion that SIPA is a remedial statute that should be construed liberally to carry out its customer-protection purpose. *See New Times*, 371 F.3d at 84 (“These statutory goals – promoting investor confidence and providing protection to investors – are better served by the SEC’s broader reading of section 9(a)(1) [§ 78fff-3].”); *Appleton v. First Nat’l Bank of Ohio*, 62 F.3d 791, 801 (6th Cir. 1995) (broadly construing SIPA to effectuate its remedial purpose). The overly rigid interpretation of SIPA urged by the Trustee and SIPC undermines this concept of flexibility and fails to achieve SIPA’s protective aims.

(ii) **The Second Circuit and District Court made clear that an inflation adjustment to “net equity” may be a viable approach.**

Far from ruling in favor of the Trustee’s restrictive and inferior interpretation of SIPA, the Second Circuit made clear that the “constant dollar” issue would need to be addressed and decided in this Court after further briefing: “We express no view on whether the Net Investment Method should be adjusted to account for inflation or interest, an issue on which the bankruptcy court has not yet ruled and which is not before us on this interlocutory appeal.” *Net Equity Decision*, 654 F.3d at 235 n.6. The Second Circuit also noted the SEC’s support for the “constant dollar” adjustment: “The SEC further argued that the Net Investment Method should be applied using inflation-adjusted dollars.” *Id.* at 234 n.4.

In declining to withdraw the reference on this issue, District Judge Rakoff also framed an adjustment for inflation as a live and viable alternative: “The defendants might well establish, for example, that under a ‘constant dollar’ approach, Madoff Securities owed them a reasonable return of interest on their investment.” *In re Madoff Secs.*, 476 B.R. 715, 727 n.10 (Bankr. S.D.N.Y. 2012) (emphasis added).

(iii) **The SIPA provisions that require current valuations support an inflation adjustment.**

Inferential support for an inflation adjustment also derives from other parts of SIPA that implicitly recognize the time value of money. For example, SIPA requires that in making distributions to customers, “all securities⁶ shall be valued as of the close of business on the filing date.” 15 U.S.C. § 78fff-2(b) (emphasis added). Embedded in this statutory directive is an inflation-based assumption. While securities prices are affected by many influences, inflation is undeniably a factor. To survive, companies necessarily must adjust to inflationary pressures. Over the long term, those adaptations are generally reflected in higher equity values. Take, for example, a customer who placed an order for Exxon shares in 1987 at the then-market price of \$10 a share. The brokerage house ultimately fails in 2012. In this setting, the customer receives under SIPA a “net equity” claim in the amount of the shares’ 2012 market value – about \$87. SIPA does not relegate the customer to the original \$10 paid for the Exxon stock in 1987.

By analogy, an inflation adjustment to cash works better than the Trustee’s unadjusted method in conforming to SIPA’s requirement that “net equity” must be based on the value of the customer’s investments “as of the close of business on the filing date.” 15 U.S.C. § 78fff-2(b). While “net cash in” is the appropriate baseline for net equity, that cash must be measured as of the petition date in order to take into account the inflationary erosion of earlier deposits.

The Trustee and SIPC argue that it is somehow dispositive that Congress provided for explicit inflation adjustments in some parts of SIPA, but not here. *See, e.g.*, Tr. Mem. at 10.

⁶ The Trustee acknowledges that customers have claims for securities, not cash, because they received account statements indicating that securities had been purchased for their accounts. *See* Tr. Mem. at 25-26; *see also New Times*, 371 F.3d at 86 (holding that “whether a claim is treated as one for securities or cash depends not on what is actually in the customer’s account but on what the customer has been told by the debtor in written confirmations.”).

However, Congress never had occasion to mention any kind of inflation adjustment in defining “net equity.” Such an adjustment would have made no sense in the plain-vanilla broker liquidation context. In the typical broker-dealer insolvency, the remedy is straightforward: the customer gets a “net equity” claim in the amount of the then-current value of the securities. As noted above, an inflation adjustment would be unnecessary in that setting because it inheres in the remedy. The customer gets the benefit of current stock pricing, which would reflect inflation or deflation, as the case may be.

The Trustee and SIPC also try, without success, to exploit the statutory requirement that “net equity” must generally be “ascertainable from the books and records of the debtor.” 15 U.S.C. § 78fff-2(b). Tr. Mem. at 9. Their logic is that the Madoff Securities books and records are silent about adjusting anything to account for inflation; therefore, the Trustee is somehow barred from making that adjustment. This argument fails for at least two reasons. First, an inflation or “constant dollar” adjustment is plainly “ascertainable” from Madoff Securities’ “books and records.” The Trustee claims that Madoff Securities kept accurate records of all deposit and withdrawal transactions – including the date of all such transactions. As a result, appropriate inflation adjustments can be made with confidence. Second, as recognized by the Second Circuit in the *Net Equity Decision*, nothing in the statute suggests that the Trustee must be slavishly tethered to using only the unadjusted amounts reflected in the books and records. SIPA does not bar the Trustee from applying a fair, uniformly applicable adjustment (like the CPI promulgated by the Bureau of Labor Statistics) to neutralize what the Supreme Court has called the “ravages of inflation.” *Will*, 449 U.S. at 220.

(iv) **SIPA's legislative history and purpose
support an inflation adjustment.**

SIPA was designed to ensure that a customer of a failed brokerage firm “receive[s] what he believes is in his account at the time the stockbroker ceases business.” H.R. Rep. No. 95-746 at 21 (1977). Amendments to SIPA were adopted by Congress in 1978 to further this purpose. *See, e.g.*, D 922 Cong. Rec. H. 36326 (daily ed. No. 1, 1977) (statement of Rep. Robert C. Eckhardt) (“One of the greatest shortcomings of the procedure under the 1970 Act, to be remedied by [the 1978 Amendments], is the failure to meet legitimate customer expectations of receiving what was in their account at the time of the broker’s insolvency.”) (emphasis added); *see also* SEC Amicus Brief, *In re Bernard L. Madoff Inv. Secs. LLC*, No. 10-2378, Docket No. 296, at 17 (2d Cir. 2012) (arguing that a “constant dollar” adjustment remedy “best effectuates SIPA’s purpose of assuring that customers receive the assets that should be in their accounts when a brokerage firm fails”). No reasonable investor would expect cash held by a third party for decades to be unadjusted, completely exposed to inflation. Adjusting net equity for inflation comports with this expectation in a way that is entirely consistent with the *Net Equity Decision* because it uses an objective, universally applicable methodology that is entirely independent of the fraudulent Madoff Securities account statements.

Additional support for an inflation adjustment can be inferred from SIPA’s requirement that a SIPC trustee allocate customer property “to customers of such debtor, who shall share ratably in such customer property on the basis of their respective net equities.” 15 U.S.C. § 78fff-2(c)(1)(B) (emphasis added). Implicit in the “ratable” sharing requirement is the concept of fair allocation. *See, e.g., SEC v. Credit Bancorp, Ltd.*, 290 F.3d 80, 89 (2d Cir. 2002) (“[T]he use of a pro rata distribution has been deemed especially appropriate for fraud victims of a ‘Ponzi scheme.’”). The Congressional objective of fairness can be satisfied only by recognizing

the equitable and economic reality that those who lost their money decades or years ago were damaged more than those who lost the same nominal amount yesterday.

Finally, an inflation adjustment is also far superior to the Trustee's approach in promoting SIPA's express goal of maintaining confidence in the securities markets. *See, e.g., SIPC v. Barbour*, 421 U.S. 412, 415 (1975) (one of Congress's goals in enacting SIPA was to "restore investor confidence in capital markets"); *SEC v. Packer, Wilbur & Co., Inc.*, 498 F.2d 978, 980 (2d Cir. 1974) (SIPA "was a legislative effort to reinforce the flagging confidence in the securities market"). The Trustee's proposed unadjusted approach, if upheld, would send a troubling signal to customers and to the securities markets as a whole that SIPA does not protect long-term investments in the context of a long-running fraud. Customers would even have a wasteful and unintended incentive to regularly flip their investments from one broker to another, so they could update the stale, unadjusted cash valuations that the Trustee advocates here. Worse, some customers could entirely lose confidence in watered-down SIPC protection and shift their funds into investments with more realistic inflation protection. *See, e.g.,* FDIC Insurance Coverage Basics, <http://www.fdic.gov/deposit/deposits/insured/basics.html> (last visited December 3, 2012) ("FDIC insurance covers depositors' accounts at each insured bank, dollar-for-dollar, including principal and any accrued interest through the date of the insured bank's closing, up to the insurance limit.") (emphasis added).

(v) **SEC Rule 15c3-3 also lends support to, rather than undermines, an inflation adjustment.**

The Trustee and SIPC also assert that SEC Rule 15c3-3's customer property protections preclude a constant dollar adjustment because the value of the inflation-adjusted customer claims could exceed the amount of customer property that must be segregated under the Rule. *See* Tr. Mem. at 19; SIPC Mem. at 15-20. But if anything, Rule 15c3-3 actually supports a constant

dollar adjustment when calculating customer SIPA claims. Rule 15c3-3 requires segregation of the amount of customer fully paid securities and the broker's excess margin net obligations to customers. 17 C.F.R. § 240.15c3-3(b)(1) ("A broker or dealer shall promptly obtain and shall thereafter maintain the physical possession or control of all fully-paid securities and excess margin securities carried by a broker or dealer for the account of customers."). The Rule values securities at their current market value, not simply their original purchase price. *See, e.g.*, 17 C.F.R. § 240.15c-3-3(a)(5) (defining "excess margin securities" as "securities . . . carried for the account of a customer having a market value in excess of 140 percent of the total of the debit balances in the customer's account or accounts . . ."). As with the SIPA requirement that "all securities shall be valued as of the close of business on the filing date" (15 U.S.C. § 78fff-2(b), discussed in Section 2(a) above), the current value of securities captures all inflationary adjustments. Market pricing is based on the economic premise of efficient markets, which assumes that the market itself corrects or self-adjusts over time for events like inflation. *See, e.g., Basic Inc. v. Levinson*, 485 U.S. 224, 246 (1988) ("Recent empirical studies have tended to confirm Congress' premise that the market price of shares traded on well-developed markets reflects all publicly available information[.]"). In short, Rule 15c3-3's segregation requirement embodies a core economic premise that incorporates any necessary inflation adjustment.

It is also revealing that the SEC saw no Rule 15c3-3 obstacle when it unequivocally and repeatedly supported a "constant dollar" adjustment. *See* Point 1(A) above. SIPC and the Trustee are thus necessarily making the dubious claim that they know more about the meaning of an SEC Rule than the SEC itself.

Finally, even assuming, *arguendo*, that Rule 15c3-3 conflicted with SIPA, statutes take precedence over conflicting administrative rules and regulations. *See, e.g., In re NextWave*

Personal Comm'ns, Inc., 244 B.R. 253, 276 (Bankr. S.D.N.Y. 2000) (collecting cases). For these reasons, the Trustee's and SIPC's Rule 15c3-3 argument has no validity.

B. Case law supports an inflation adjustment.

(i) The cases cited by the Trustee and SIPC are neither relevant nor controlling.

The Trustee urges rejection of an inflation adjustment based on case law rejecting customer/claimant arguments that they should be entitled to the imaginary investment returns promised by the fraudster. *See* Tr. Mem. at Point C. These cases are not on point, in large part because a universally applicable inflation adjustment is not the same as individualized victim claims for interest or damages, typically based on the fraudster's promise.⁷ Indeed, none of the cases cited by the Trustee expressly dealt with a universally applied, conservative measure that covered only the time-value of money, such as the CPI, as proposed by the Customers here.

For example, in the Trustee's very first case citation, *In re Old Naples Secs., Inc.*, 311 B.R. 607, 617 (Bankr. M.D. Fla. 2002) (Tr. Mem. at 11), the Trustee neglects to point out that the customer/claimants in that case were asking the court to approve their full SIPC claim without deducting the so-called "interest" payments they received from the fraudster. The claimants "were promised a risk-free investment with a 30-to 45-day return of principal plus a guaranteed percentage return on principal, usually 7%." *Id.* at 610. Annualized, those promised returns ranged from 56% to 84%. In contrast, the Customers here are not asking for validation of the Madoff account statement returns. Rather the Customers here seek only a universally applied

⁷ The right to assert substantive state law remedies as "value" defenses under Bankruptcy Code 548(c) has been briefed and is currently awaiting a decision by Judge Rakoff. Whatever Judge Rakoff ultimately decides, the issue in this Court is different: whether the Trustee must adjust the SIPA "net equity" computation to take into account the effects of inflation over time.

adjustment to account for inflation (or deflation), which would have the effect of treating all customers fairly.

The next case cited by the Trustee (on which *Old Naples* relied) is *In re C.J. Wright & Co., Inc.*, 162 B.R. 597 (Bankr. M.D. Fla. 1993). Trustee Mem. at 11. In that case as well, the issue was whether claimants could keep (and not have deducted from their claims) interest they expected to receive from their certificates of deposit. Those CDs were fraudulent and were never purchased. Accordingly, the court rejected this attempt to benefit from the fraudster's fictional rate of return – much the same rationale used by this Court and by the Second Circuit in the *Net Equity Decision*. This decision is thus distinguishable for the same reason as *Old Naples*.

Old Naples and *C.J. Wright* also involved Ponzi schemes that had relatively short durations, ranging from months to a few years. The “constant dollar” issue was apparently never even raised or discussed, possibly because the adjustment might have had only minimal or no effect. Those cases are accordingly irrelevant.

SIPC also cites *Saunders v. Claytor*, 629 F.2d 596, 598 (9th Cir. 1980) (SIPC Mem. at 14), in which the Court refused to adjust for inflation a federal employee's Title VII discrimination award. But the Court's ruling was based on federal sovereign immunity and “in *dicta*, indicated that an inflation correction factor may be an appropriate remedy for private sector Title VII plaintiffs.” *Kouba v. Allstate Ins. Co.*, No. S-77-99, 1981 WL 27108, at *8 (E.D. Ca. Sept. 24, 1981).

The SEC, in urging application of the “constant dollar” adjustment, referred to one possibly *contra* case that it considered worthy of mention. *See* Point 1(A) above. That case, *SIPC v. Ambassador Church Fin. Dev. Grp., Inc.*, 788 F.2d 1208 (6th Cir. 1986), is cited by both the Trustee and SIPC for the proposition that “SIPA does not authorize the SIPC to pay interest,

either to the trustee or directly to the debtor's customers." *Id.* at 1212. But the SEC was ultimately untroubled by the case, concluding that "the use of constant dollars can be distinguished from the payment of interest discussed in that Sixth Circuit case." SEC policy statement at 8 (Schwed Decl. Ex. B), *also found at Madoff Ponzi Scheme*, 2009 WL 4647561 at *10. And indeed *Ambassador Church* is readily distinguishable. That case had nothing to do with the issue presented by the Trustee's Motion: the equities as among customers, based on the timing of their deposits and withdrawals. Rather, the issue there was a contention by customers that they were entitled to post-petition interest for the more than seven years it took SIPA to get around to paying their claims. *Ambassador Church*, 788 F.2d at 1210-11. In rejecting that argument, the court's first ground of decision was the longstanding general rule that "[u]nder bankruptcy law, with certain exceptions not applicable in this case, a court cannot award postpetition interest against the debtor's estate unless the surplus exists." *Id.* The Court supplemented this reasoning by stating: "Furthermore, the rule reflects the broad equitable principle that creditors should not be disadvantaged vis-à-vis one another by legal delays attributable solely to the time-consuming procedures inherent in the administration of the bankruptcy laws." *Id.* (internal quotations omitted).

The *Ambassador Church* rationale accordingly has no relevance here. The Customers are not claiming the right to post-petition interest. Moreover, even if the case were read in the way urged by the Trustee, the decision would not be binding on courts in this Circuit.

**(ii) Emerging case law in analogous
settings supports an inflation adjustment.**

Some well-reasoned cases have held that a good-faith Ponzi-scheme investor is entitled to an adjustment for interest in the context of an avoidance action defense. *See, e.g., In re Carrozzella & Richardson*, 286 B.R. 480, 484 n.7 (Bankr. D. Conn 2002) (allowing assertion of

contract-based interest that was “not unreasonably high”); *In re Unified Commercial Capital, Inc.*, 260 B.R. 343, 351 (Bankr. W.D.N.Y. 2001), *aff’d*, 2002 WL 32500567 (W.D.N.Y. June 21, 2002) (same; noting “universally accepted fundamental commercial [principle] that, when you loan an entity money for a period of time in good faith, you have given value and are entitled to a reasonable return”).

The Trustee ignores *Carrozzella* and attempts to distinguish *Unified* by noting that the decision turned on the Ponzi schemer’s promise of a specific contractual interest rate to the customer. Tr. Mem. at 23. But in fact, the Customers’ equitable argument here is stronger than the claims of defendants in those cases. The Customers are not seeking ratification of any fraudulently promised interest rate. Rather, the Customers ask only for a judicially approved, universally applied inflation adjustment that gives no Customer a profit but does place all Madoff victims on an equal economic footing.⁸

In short, whether to adjust customers’ “net equity” to account for inflation is an issue of first impression. This absence of on-point law is not surprising, given that massive, long-term Ponzi frauds are uncommon and of relatively recent vintage. *See* footnote 5, above. However, some law is beginning to emerge in non-SIPA contexts. Currently awaiting decision in the Second Circuit is an investor claim for a “constant dollar” adjustment in the W.G. Trading (Westridge) Ponzi fraud, a non-SIPA equity receivership. *See CFTC v. Walsh*, No. 11-1516 (2d Cir.).

⁸ The Customers are not currently arguing that any specific method must be used to make an appropriate “constant dollar” adjustment. The CPI-U (All-Urban Consumers) is widely used and the Trustee admits he has himself adopted this measure in calculating the effects of a “constant dollar” adjustment. *See* Point 2(C), below. But alternative methods of adjustment may also be appropriate in this case as well. The Trustee’s refusal to adopt any inflation adjustment, however, is an abuse of discretion. *See* Point 1(A), above.

Also, the High Court of New Zealand (citing the SEC's position in this case) held that, in a 20-year Ponzi scheme, "constant dollar" would represent the "fairer distribution," in view of the goal of trying to "equalize as much as possible the same dollar value between investors whenever they invested their money." *In re Waipawa Finance Co. Ltd.*, 2011 NZCCLR 14 (7 Feb. 2011, NZHC CIV-2010-441-465) (annexed to the Schwed Declaration as Exhibit D). While New Zealand precedent is obviously not binding here, it is noteworthy that a significant Commonwealth jurisdiction has approved the universal principle that fairness requires inflation adjustment.

C. That an inflation adjustment could reduce the Trustee's potential fraudulent transfer recoveries is irrelevant. In fact, additional SIPC advances resulting from the adjustment could offset any revenue loss to the estate.

The Trustee's Motion is accompanied by a declaration of Robert J. Rock (the "Rock Decl."), a Managing Director of Alix Partners, LLP. Mr. Rock opines that if an inflation adjustment were made, "the differential between the total net winner balances under the Net Investment Method [the Trustee's unadjusted method] and the balances for those same amounts after the Inflationary Adjustment would decrease by an amount equal to approximately \$330 million." Rock Decl. at ¶ 9. The implication is that an inflation adjustment is a bad idea because it would limit the money the Trustee could recover in his fraudulent transfer lawsuits.

This argument has no legal or equitable force. The Customers recognize that maximizing the value of avoidance recoveries to a bankrupt estate is an important practical objective. But this goal cannot be achieved at the expense of legitimate defenses, or by ignoring the equitable and policy limitations on such recoveries.

In fact, adjusting for inflation will likely increase the aggregate amounts available for distribution to customers, thus furthering SIPA's remedial purpose. An inflation adjustment

would require SIPC to inject more funds into the estate to cover the increased “net equity” claims of customers with earlier deposits. *See* footnote 4, above. These advances would never need to be repaid by the estate if (as may be the case here) the Trustee is unable to satisfy customer claims in full. It is therefore far from clear that the net effect of a “constant dollar” adjustment would mean less total money for distribution to Madoff’s victims.

D. The argument that applying an inflation adjustment would create additional expense and delay is not convincing, particularly since the Trustee admits he has already substantially completed the computations necessary to make that adjustment.

The Trustee argues that a “constant dollar” adjustment “creates more harm than good.” Tr. Mem. at Point G(2) (section title). The Trustee trots out one potential horror after another: adjusting the claims “would require that the Trustee once again perform a transaction-by-transaction, account-by-account, review”; it would take “as long as twelve months to perform”; objections could cause “years of delay”; and the Trustee would incur additional administration costs of “tens of millions of dollars.” *Id.*

This “administrative burden” argument is undermined by the Trustee’s own papers. First, the Trustee admits that he has already done virtually all of the computations necessary to make the “constant dollar” adjustment.⁹ Indeed, Mr. Rock admits that he performed calculations that “included adjusting for inflation the transactions for all active Madoff Securities accounts for which a customer claim was filed,” and he used the Bureau of Labor Statistic’s CPI to do so. Rock Decl. at ¶ 4. In other words, most, if not all, of the adjustment work has already been done.

⁹ The Rock Decl. was submitted to show how an adjustment could alter the landscape of claim holders and clawback defendants. But this showing is irrelevant because any adjustment, of any kind, will likely benefit some and not others. The Trustee’s point is valid only if the proposed adjustment is unfair. An inflation adjustment is fair, so the argument has no force. For example, the Trustee complains that some feeder funds would gain and some would lose under “constant dollar.” Tr. Mem. at Point G(3). But there is no inherent injustice in such a re-allocation, which would be based entirely on the inflation adjustment principles discussed in this brief.

The expense of this work is a “sunk cost”; it accordingly is not a legitimate factor in the Trustee’s future budgeting calculus.

The Trustee warns that if an inflation adjustment were adopted, “there would still be significant additional work” to do. Trustee Mem. at n.13. But given what Mr. Rock has already conceded, this additional marginal effort would likely be immaterial. Decades ago, the computations to adjust the net dollars for inflation might have been unduly burdensome or time-consuming. But in this era of personal computers and off-the-shelf spreadsheets, even complex calculations of this type can be done easily, quickly and cheaply. Given Alix Partners’ sophistication and access to state-of-the-art financial analytical tools, it is hard to imagine that polishing up this already-performed analysis would require an inordinate additional effort.

Furthermore, any additional costs are borne by SIPC, not the Madoff Securities estate. While expenses paid by SIPC are technically deemed “advances,” SIPC’s right to repayment is subordinated to payment in full of all customers’ net equity claims. *See* footnote 4, above. The “statutory goals” of SIPA are “promoting investor confidence and providing protection to investors.” *New Times*, 371 F.3d at 84. Any additional cost to SIPC would be a small price to pay for a distribution mechanism that furthers these goals and achieves fairness across the spectrum of defrauded Madoff victims.

Moreover, any additional computational expense would, in the larger scheme, amount to little more than rounding error, considering the vast sums the Trustee has already spent administering the case. Even if the incremental cost of adjustment was, as the Trustee claims, \$10 million, it would represent less than 2% of the more than \$550 million in administrative costs already incurred by the Trustee. Any additional expense to make the inflation adjustment

would be money well spent because it would further the fundamental goal of equitably distributing funds to Madoff's victims.

Finally, any delay resulting from the implementation of an inflation adjustment could easily have been avoided by the Trustee. The Customers raised their entitlement to a time value adjustment as early as June 2009. Had the Trustee been concerned with delay, he could have set the issue for earlier briefing or prepared alternative calculations so that an inflation adjustment could be implemented seamlessly when the issue was finally determined. The Customers' right to an inflation adjustment should not be prejudiced by the Trustee's failure to take those steps.

CONCLUSION

For the foregoing reasons, the Customers request, along with any other relief that may be just and proper, that the Court dispose of the Trustee's Motion as follows:

(1) The Trustee's request for a determination that no time-value adjustments are required for net equity claims should be denied, and the request by the Customers for a determination that all net equity claims should be adjusted to account for the effects of inflation, should be granted.

(2) The Trustee and SIPC should be directed to confer with the Customers and, if the SEC desires to participate, the SEC, regarding the Trustee's inflation calculations described in the Rock Declaration and the propriety of the underlying assumptions and adjustment protocols used by the Trustee. The parties should be required jointly to report to the Court, by a date to be set by the Court, concerning the status of their efforts to reach agreement on those issues.

(3) If, by the reporting date to be set by the Court, the parties cannot reach agreement on the issues identified in paragraph (2) above, the matter should be submitted to the Court for determination after further briefing and argument on a schedule to be set by the Court, upon notice to all claimants and proposed intervenors.

Dated: New York, New York
December 3, 2012

Respectfully submitted,

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Schedule A

The Customers

Customer	Account No.	Customer Claim No.	Objection Docket No.	Adversary Proceeding	Law Firm
Alan F. Aufzien and Norma K. Aufzien JT/WROS	1CM198	004252	944	10-04483	Loeb & Loeb LLP ¹⁰
Jonathan M. Aufzien	1CM802	3407	945	10-04483	Loeb & Loeb LLP
Lisa Aufzien	1CM800	4170	946	10-04483	Loeb & Loeb LLP
Leslie Aufzien Levin	1CM799	5557	947	10-04483	Loeb & Loeb LLP
Meredith Aufzien Bauer	1CM801	4901	948	10-04483	Loeb & Loeb LLP
Kenneth L. Evenstad Revocable Trust u/a/d May 2, 2000	1E0139 1U0023	N/A	N/A	10-04933 10-04952	Loeb & Loeb LLP
SEW Preferred Limited Partnership	1S0512	14160	N/A	10-04945	Loeb & Loeb LLP
MBE Preferred Limited Partnership	1M0219	14302	N/A	10-04952	Loeb & Loeb LLP
Mark B. Evenstad Revocable Trust u/a dated January 30, 2003	1E0170	N/A	N/A	10-04512	Loeb & Loeb LLP
Serene Warren Revocable Trust U/A/D September 15, 2005	1W0126	N/A	N/A	10-04520	Loeb & Loeb LLP
Gorvis LLC	1G0118	N/A	N/A	10-04544	Loeb & Loeb LLP
The Koff Living Trust	1K0207	N/A	N/A	10-04926	Loeb & Loeb LLP

¹⁰ In addition to the Customers set forth on this Schedule A, Loeb & Loeb LLP submits this brief on behalf of each of the defendants in the avoidance actions to which those Loeb-represented Customers are parties.

Customer	Account No.	Customer Claim No.	Objection Docket No.	Adversary Proceeding	Law Firm
Estate Of Doris M. Pearlman; Heidi Pearlman, In Her Capacity As Personal Representative Of The Estate Of Doris M. Pearlman; Jill Beth Pearlman, In Her Capacity As Personal Representative Of The Estate Of Doris M. Pearlman; Heidi Pearlman, In Her Capacity As Co-trustee Of The Doris M. Pearlman Revocable Trust; Jill Beth Pearlman, In Her Capacity As Co-trustee Of The Doris M. Pearlman Revocable Trust; Heidi Pearlman, As Subsequent Beneficiary; Jill Beth Pearlman, As Subsequent Beneficiary; The Doris M. Pearlman Revocable Trust, As A Subsequent Beneficiary; Marvin A. Goldenberg, As A Subsequent Beneficiary	1P0099	006373 006869 015649 015652	N/A	10-04504	K&L Gates LLP
United Congregations Mesora	1U0013	N/A	N/A	10-05110	K&L Gates LLP
Chesed Congregations of America	1C1221	N/A	N/A	10-05054	K&L Gates LLP

Customer	Account No.	Customer Claim No.	Objection Docket No.	Adversary Proceeding	Law Firm
South Ferry Building Company, A New York Limited Partnership; Emanuel Gettinger Abraham Wolfson Zev Wolfson, In His Capacity As Trustee U/i/t F/b/o Aaron Wolfson And Alisa Wolfson Zev Wolfson, Individually A. Trust Aa. Trust A.o.n. Trust Aaron Trust Abraham Adeff Abraham Trust Abraham N. Trust Al. Trust Alisa Trust A.n. Trust Goldie Appelgrad, Individually Goldie Appelgrad, In Her Capacity As A Joint Tenant Of Simcha & Goldie Applegrad, As J/t/w/r/o/s Simcha Appelgrad, Individually Simcha Appelgrad, In His Capacity As A Joint Tenant Of Simcha & Goldie Applegrad, As J/t/w/r/o/s David G. Aviv Miriam Beren B.F.&W. Realty Company, A New York Limited Partnership Helen Elbaum, In Her Capacity As Custodian For Zelda Elbaum And Ruth Elbaum Zelda Elbaum Razel Faskowitz Roslyn Gettinger Morris Goldstein Samuel Goldstein	1S0451	N/A	N/A	10-04488	K&L Gates LLP

Customer	Account No.	Customer Claim No.	Objection Docket No.	Adversary Proceeding	Law Firm
Israel Grossman Kalman Halpern Zevi Harris Joseph Katz, Bessie Kaufman, Individually Bessie Kaufman, In Her Capacity As Joint Tenant Of David & Bessie Kaufman, As J/t/w/r/o/s David Kaufman, Individually David Kaufman, In His Capacity As Joint Tenant Of David & Bessie Kaufman, As J/t/w/r/o/s Sara Klein, Individually Sara Klein, In Her Capacity As Joint Tenant Of Joint Tenant Of Sol & Sara Klein, As J/t/w/r/o/s Sol Klein, Individually Sol Klein, In His Capacity As Joint Tenant Of Sol & Sara Klein, As J/t/w/r/o/s Albert Kleinman Moses Leiter, Individually Moses Leiter, In His Capacity As Joint Tenant Of Moses & N. Zwi Leiter, J/t/w/r/o/s N. Zwi Leiter, Individually N. Zwi Leiter, In Her Capacity As Joint Tenant Of Moses & N. Zwi Leiter, J/t/w/r/o/s Gerda Levinsohn Hyman Mandelbaum Max Mandis, Individually Max Mandis, In His Capacity As Joint Tenant Of Max Mandis & Freda Rosenberg, As J/t/w/r/o/s Anthony Margadonna, Individually Anthony Margadonna, In His Capacity As Joint Tenant Of Anthony & Julia Margadonna, As					

Customer	Account No.	Customer Claim No.	Objection Docket No.	Adversary Proceeding	Law Firm
J/t/w/r/o/s Julia Margadonna, Individually Julia Margadonna, In Her Capacity As Joint Tenant Of Anthony & Julia Margadonna, As J/t/w/r/o/s Clara Meth Morris Milewski Morris Nussbaum Mary Peters R. Trust R.a. Trust Rebecca Trust Irving Rosen Freda Rosenberg, Individually Freda Rosenberg, In Her Capacity As Joint Tenant Of Max Mandis & Freda Rosenberg, As J/t/w/r/o/s Leo Schechter Benjamin Schenker, Individually Benjamin Schenker, In His Capacity As Joint Tenant Of Benjamin & Minnie Schenker, As J/t/w/r/o/s Minnie Schenker, Individually Minnie Schenker, In Her Capacity As Joint Tenant Of Benjamin & Minnie Schenker, As J/t/w/r/o/s Mildred Shapiro, Individually Mildred Shapiro, In Her Capacity As Joint Tenant Of Rabbi Solomon B. & Mildred Shapiro, As J/t/w/r/o/s Rabbi Solomon B. Shapiro, Individually Rabbi Solomon B. Shapiro, In His Capacity As Joint Tenant Of Rabbi Solomon B. & Mildred Shapiro, As J/t/w/r/o/s Leon Shiffman					

Customer	Account No.	Customer Claim No.	Objection Docket No.	Adversary Proceeding	Law Firm
Lee Siegmund Nachema Singer Sarah Spindell Chaim Twersky, Individually Chaim Twersky, In His Capacity As A Joint Tenant Of Chaim & Rachel Twersky, As J/t/w/r/o/s Rachel Twersky, Individually Rachel Twersky, In Her Capacity As A Joint Tenant Of Chaim & Rachel Twersky, As J/t/w/r/o/s Ernest Wachtel, Individually Ernest Wachtel, In His Capacity As Joint Tenant Of Ernest & Rose Wachtel, As J/t/w/r/o/s Rose Wachtel, Individually Rose Wachtel, In Her Capacity As Joint Tenant Of Ernest & Rose Wachtel, As J/t/w/r/o/s Max Well Chana Wolfson Helen Younger Aaron Zeitlin, Individually Aaron Zeitlin, In His Capacity As Trustee For Abraham Trust Aaron Zeitlin, In His Capacity As Trustee For Rebecca Trust Aaron Zeitlin, In His Capacity As Trustee For Alisa Trust Aaron Zeitlin, In His Capacity As Trustee For Aaron Trust Aaron Zeitlin, In His Capacity As Trustee For Abraham N. Trust Aaron Zeitlin, In His Capacity As Trustee For					

Customer	Account No.	Customer Claim No.	Objection Docket No.	Adversary Proceeding	Law Firm
R.a. Trust Aaron Zeitlin, In His Capacity As Trustee For Ai. Trust Aaron Zeitlin, In His Capacity As Trustee For Aa. Trust Aaron Zeitlin, In His Capacity As Trustee For A.n. Trust Aaron Zeitlin, In His Capacity As Trustee For R. Trust Aaron Zeitlin, In His Capacity As Trustee For A. Trust Aaron Zeitlin, In His Capacity As Trustee For A.o.n. Trust Rachel Zeitlin					
Lanx BM Investments, LLC The Lanx Fund II, LP Wolfson Cousins, LP Edara Partnership	1L0228	N/A	N/A	10-04384	K&L Gates LLP
Wolfson Equities Aaron Wolfson, Individually The Aaron Wolfson 1983 Trust The Abraham Wolfson 1983 Trust The Alisa Wolfson Safier 1983 Trust The Daniel Wolfson 1983 Trust The Elishiva Wolfson 1983 Trust The Nadine R. Wolfson 1991 Trust The Rebecca Wolfson Wolmark 1983 Trust The Wolfson Trust	1W0108	N/A	N/A	10-05220	K&L Gates LLP
Ezriel Munk, In His Capacity As Trustee Of The Wolfson Descendants 1983 Trust Ezriel Munk, In His	1Z0027	N/A	N/A	10-04374	K&L Gates LLP

Customer	Account No.	Customer Claim No.	Objection Docket No.	Adversary Proceeding	Law Firm
Capacity As Trustee The ZW 1999 Trust Wolfson Descendants 1983 Trust Zev Wolfson ZW 1999 Trust ZWD Investments, LLC					
Aaron Wolfson Abraham Wolfson Emmanuel Gettinger South Ferry #2 LP South Ferry Building Company Zev Wolfson	1S0447	N/A	N/A	10-04350	K&L Gates LLP
James Lowrey, Individually James Lowrey, In His Capacity As General Partner Of Turtle Cay Partners James Lowrey, In His Capacity As Personal Representative Of The Estate Of Marianne Lowrey James Lowrey, In His Capacity As Trustee For The Marianne B. Lowrey Trust James Lowrey In His Capacity As Successor Partner Of Coldbrook Associates Partnership The Estate Of Marianne Lowrey Turtle Cay Partners Coldbrook Associates Partnership, Individually Coldbrook Associates Partnership, In Its Capacity As General Partner Of Turtle Cay Partners Trust Created For The Benefit Of Jessica Lee Lowrey Under Article Second Of A Certain Trust Agreement Dated August	1CM585 1CM832 1CM880	N/A	N/A	10-04387	K&L Gates LLP

Customer	Account No.	Customer Claim No.	Objection Docket No.	Adversary Proceeding	Law Firm
29, 1984 Trust Created For The Benefit Of Tracy Mcdonald Lowrey Under Article Second Of A Certain Trust Agreement Dated August 29, 1984 Trust Created For The Benefit Of Whitney Hanlon Lowrey Under Article Second Of A Certain Trust Agreement Dated August 29, 1984 Jessica Lee Lowrey, Individually Jessica Lee Lowrey, In Her Capacity As Personal Representative Of The Estate Of Marianne Lowrey Jessica Lee Lowrey, In Her Capacity As Trustee For The Marianne B. Lowrey Trust Jessica Lee Lowrey, In Her Capacity As Successor Partner Of Coldbrook Associates Partnership Tracy Mcdonald Lowrey Lenehan, Individually Tracy Mcdonald Lowrey Lenehan, In Her Capacity As Personal Representative Of The Estate Of Marianne Lowrey Tracy Mcdonald Lowrey Lenehan,in Her Capacity As Trustee For The Marianne B. Lowrey Trust Tracy Mcdonald Lowrey Lenehan, In Her Capacity As Successor Partner Of Coldbrook Associates Partnership Whitney Hanlon Lowrey Gaeta, Individually Whitney Hanlon Lowrey Gaeta, In Her Capacity As					

Customer	Account No.	Customer Claim No.	Objection Docket No.	Adversary Proceeding	Law Firm
Personal Representative Of The Estate Of Marianne Lowrey Whitney Hanlon Lowrey Gaeta, In Her Capacity As Trustee For The Marianne B. Lowrey Trust Whitney Hanlon Lowrey Gaeta, In Her Capacity As Successor Partner Of Coldbrook Associates Partnership Larry B. Alexander, In His Capacity As Personal Representative Of The Estate Of Marianne Lowrey Larry B. Alexander, In His Capacity As Trustee For The Marianne B. Lowrey Trust Larry B. Alexander, In His Capacity As Successor Partner Of Coldbrook Associates Partnership The Marianne B. Lowrey Trust					

Customer	Account No.	Customer Claim No.	Objection Docket No.	Adversary Proceeding	Law Firm
Ambassador Shoe Corp.	IEM280	N/A	N/A	10-04340	Kramer Levin Naftalis & Frankel LLP ¹¹
NTC& Co LLP FBO Arthur M. Siskind	IS0231	N/A	N/A	10-04365	Kramer Levin Naftalis & Frankel LLP
Lillian Berman Goldfarb	1G0087	009059	N/A	10-04366	Kramer Levin Naftalis & Frankel LLP
Estate of Helene Abraham	1AO125	N/A	N/A	10-04372	Kramer Levin Naftalis & Frankel LLP
Estate of Alexander Abraham	1A0129	N/A	N/A	10-04372	Kramer Levin Naftalis & Frankel LLP
Richard A. Broms Revocable Trust	1EM029	N/A	N/A	10-04373	Kramer Levin Naftalis & Frankel LLP
Carol Nelson & Stanley Nelson J/T WROS	1ZA284	000480	N/A	10-04377	Kramer Levin Naftalis & Frankel LLP
Lyle A. Berman Revocable Trust U/A DTD 6/18/04	1B0015	N/A	N/A	10-04382	Kramer Levin Naftalis & Frankel LLP
Douglas Rimsky	1CM156	012150	N/A	10-04388	Kramer Levin Naftalis & Frankel LLP
Douglas Rimsky C/F Margaret Rimsky	1CM283	N/A	N/A	10-04388	Kramer Levin Naftalis & Frankel LLP
Douglas Rimsky C/F Sarah Rimsky	1CM284	N/A	N/A	10-04388	Kramer Levin Naftalis & Frankel LLP
Rimsky Family Ltd. Partnership	1CM337	N/A	N/A	10-04388	Kramer Levin Naftalis & Frankel LLP

¹¹ In addition to the Customers set forth on this Schedule A, Kramer Levin Naftalis & Frankel LLP submits this brief on behalf of each of the defendants in the avoidance actions to which those Kramer Levin-represented Customers are parties, with the exception of the following avoidance actions: (i) Picard v. Rosenfield (represent Robert Rosenfield only); (ii) Picard v. Lehrer (represent Stuart Stein, Arthur Siskind, Arthur J. Feibus, Jamat Company, LLC, and The Mestro Company only); (iii) Picard v. Trust U/W/O Thomas Langbert F/B/O Evelyn Langbert (represent Trust U/W/O Thomas Langbert F/B/O Evelyn Langbert, Evelyn Langbert, and Fred Dechowitz (deceased), only); and (iv) Picard v. Meyer Goldman (represent Neil S. Goldman only).

Customer	Account No.	Customer Claim No.	Objection Docket No.	Adversary Proceeding	Law Firm
Estate of Robert Rimsky	1CM386	N/A	N/A	10-04388	Kramer Levin Naftalis & Frankel LLP
Article Third Trust U/W Jeanne Rimsky	1CM387	014282	N/A	10-04388	Kramer Levin Naftalis & Frankel LLP
Robert A. Meister	1M0074	N/A	N/A	10-04409	Kramer Levin Naftalis & Frankel LLP
Theresa Berman Revocable Trust	1B0268	N/A	N/A	10-04416	Kramer Levin Naftalis & Frankel LLP
The Olesky Survivors Trust dated 2/27/84	1EM142	N/A	N/A	10-04427	Kramer Levin Naftalis & Frankel LLP
Malcolm L. Sherman	1EM193	014417	N/A	10-04430	Kramer Levin Naftalis & Frankel LLP
AGAS Company LP	1CM225	N/A	N/A	10-04431	Kramer Levin Naftalis & Frankel LLP
Fred Schwartz & Allyne Schwartz JT WROS	1CM621	012137	N/A	10-04431	Kramer Levin Naftalis & Frankel LLP
AHT Partners, L.P.	1A0116	011191	N/A	10-04439	Kramer Levin Naftalis & Frankel LLP
BWA Ambassador Inc.	1B0101	N/A	N/A	10-04452	Kramer Levin Naftalis & Frankel LLP
Greenman Family Foundation	1CM254	013434	N/A	10-04479	Kramer Levin Naftalis & Frankel LLP
Lester Greenman	1CM272	011759	N/A	10-04479	Kramer Levin Naftalis & Frankel LLP
Stewart Katz & Judith Katz J/T WROS	1CM274	005511	N/A	10-04479	Kramer Levin Naftalis & Frankel LLP
Bernard Greenman Marital Deduction Trust U/A/D 3/22/91	1G0086	013433	N/A	10-04479	Kramer Levin Naftalis & Frankel LLP
Michael Goldstein	1G0264	000790	N/A	10-04482	Kramer Levin Naftalis & Frankel LLP

Customer	Account No.	Customer Claim No.	Objection Docket No.	Adversary Proceeding	Law Firm
Michael Goldstein #2	1G0265	000791	N/A	10-04482	Kramer Levin Naftalis & Frankel LLP
Michael Goldstein #3	1G0266	000792	N/A	10-04482	Kramer Levin Naftalis & Frankel LLP
Indian Wells Partnership	1H0069	014416	N/A	10-04484	Kramer Levin Naftalis & Frankel LLP
NTC & CO FBO Geoffrey S. Rehnert	1R0201	N/A	N/A	10-04556	Kramer Levin Naftalis & Frankel LLP
Meyer Goldman	1G0232	N/A	N/A	10-04567	Kramer Levin Naftalis & Frankel LLP
Karen Siff Exkorn	1EM195	070171	N/A	10-04587	Kramer Levin Naftalis & Frankel LLP
Collingwood Group	1CM850	N/A	N/A	10-04640	Kramer Levin Naftalis & Frankel LLP
Rubin Family Investments Partnership	1CM601	N/A	N/A	10-04521	Kramer Levin Naftalis & Frankel LLP
Shirley S. Siff Trust 1989 DTD 12/02/89	1EM198	014422	N/A	10-04641	Kramer Levin Naftalis & Frankel LLP
NTC & CO FBO Marc B. Wolpow	1W0067	N/A	N/A	10-04646	Kramer Levin Naftalis & Frankel LLP
Marc Wolpow	1W0100	N/A	N/A	10-04646	Kramer Levin Naftalis & Frankel LLP
The Marc B. Wolpow 1995 Family Trust	1W0117	N/A	N/A	10-04646	Kramer Levin Naftalis & Frankel LLP
Audax Group LP	1AO120	N/A	N/A	10-04651	Kramer Levin Naftalis & Frankel LLP
Carol Nelson	1ZA283	000495	N/A	10-04658	Kramer Levin Naftalis & Frankel LLP
NTC & CO FBO Carol Nelson	1ZR265	000531	N/A	10-04658	Kramer Levin Naftalis & Frankel LLP

Customer	Account No.	Customer Claim No.	Objection Docket No.	Adversary Proceeding	Law Firm
Gordon Associates	1G0302	N/A	N/A	10-04684	Kramer Levin Naftalis & Frankel LLP
NTC & CO FBO Robert M. Siff	1ZR207	011614	N/A	10-04705	Kramer Levin Naftalis & Frankel LLP
NTC & CO Maurice Rosenfield FTC	1R0151	N/A	N/A	10-04736	Kramer Levin Naftalis & Frankel LLP
Lawrence A. Siff	1EM196	013410	N/A	10-04745	Kramer Levin Naftalis & Frankel LLP
NTC & CO FBO Kay Morrissey	1M0072	011200	N/A	10-04767	Kramer Levin Naftalis & Frankel LLP
Ludmilla Goldberg	1G0272	000794	N/A	10-04811	Kramer Levin Naftalis & Frankel LLP
Heller Bros Partnership Ltd.	1H0126	013890	N/A	10-04863	Kramer Levin Naftalis & Frankel LLP
NTC & CO FBO James Morrissey	1M0071	011199	N/A	10-04874	Kramer Levin Naftalis & Frankel LLP
Branch Family Development LLC	1B0225	N/A	N/A	10-04949	Kramer Levin Naftalis & Frankel LLP
Mathew & Evelyn Broms Investment Partnership	1EM028	N/A	N/A	10-04985	Kramer Levin Naftalis & Frankel LLP
Carol Lederman	1ZB358	N/A	N/A	10-04990	Kramer Levin Naftalis & Frankel LLP
Lucerne Foundation	1CM197	N/A	N/A	10-05055	Kramer Levin Naftalis & Frankel LLP
James Heller	1H0024	N/A	N/A	10-05061	Kramer Levin Naftalis & Frankel LLP
Love & Quiches Ltd Pension Plan	1CM118	N/A	N/A	10-05066	Kramer Levin Naftalis & Frankel LLP
Susan Axelrod	1CM327	000222	N/A	10-05066	Kramer Levin Naftalis & Frankel LLP

Customer	Account No.	Customer Claim No.	Objection Docket No.	Adversary Proceeding	Law Firm
D Stone Industries Inc. Profit Sharing Plan	IS0201	014303	N/A	10-05068	Kramer Levin Naftalis & Frankel LLP
The Lyle Berman Family Partnership	IB0242	N/A	N/A	10-05071	Kramer Levin Naftalis & Frankel LLP
Bertram Bromberg Trust UAD 5/26/06	1B0069	009098	N/A	10-05080	Kramer Levin Naftalis & Frankel LLP
Gloria Bromberg Trust UAD 5/26/06	1B0125	003174	N/A	10-05080	Kramer Levin Naftalis & Frankel LLP
NTC & CO FBO Bertram Bromberg	1B0172	009097	N/A	10-05080	Kramer Levin Naftalis & Frankel LLP
Susan Jane Stone	1S0199	070198	N/A	10-05084	Kramer Levin Naftalis & Frankel LLP
Daniel Stone	1S0210	009029	N/A	10-05084	Kramer Levin Naftalis & Frankel LLP
Howard Vogel Retirement Plan	1CM262	N/A	N/A	10-05090	Kramer Levin Naftalis & Frankel LLP
Eugenia G. Vogel	1CM312	N/A	N/A	10-05090	Kramer Levin Naftalis & Frankel LLP
Howard Vogel	1CM754	N/A	N/A	10-05090	Kramer Levin Naftalis & Frankel LLP
Harry Schick	1S0035	000330	N/A	10-05096	Kramer Levin Naftalis & Frankel LLP
NTC & CO FBO Robert M. Siff	1ZR215	011615	N/A	10-05100	Kramer Levin Naftalis & Frankel LLP
Lichter Family Partnership	1EM115	N/A	N/A	10-05129	Kramer Levin Naftalis & Frankel LLP
The Robert M. Siff Trust - 1990	1EM197	N/A	N/A	10-05138	Kramer Levin Naftalis & Frankel LLP
Joyce Moscoe Rev Tst Agmt DTD 10/91	1EM130	N/A	N/A	10-05140	Kramer Levin Naftalis & Frankel LLP

Customer	Account No.	Customer Claim No.	Objection Docket No.	Adversary Proceeding	Law Firm
Estate of Elaine Cooper	1ZB530	N/A	N/A	10-05167	Kramer Levin Naftalis & Frankel LLP
Jeffrey H. Fisher Separate Property Revocable Trust DTD 6/7/2007	1F0217	Claim not determined	Claim not determined	10-05247	Kramer Levin Naftalis & Frankel LLP
Stanley I Lehrer & Stuart M Stein JT WROS	1L0013	004003	N/A	10-05259	Kramer Levin Naftalis & Frankel LLP
RIP Investments, LP	1CM222	N/A	N/A	10-05289	Kramer Levin Naftalis & Frankel LLP
David A. Wingate	1CM581	009781	N/A	10-05327	Kramer Levin Naftalis & Frankel LLP
Marc B. Fisher	1F0164	010658	N/A	10-05336	Kramer Levin Naftalis & Frankel LLP
Falcon Associates, L.P.	1F0171	N/A	N/A	10-05336	Kramer Levin Naftalis & Frankel LLP
Trust U/W/O H Thomas Langbert FBO Evelyn Langbert	1L0003	012232	N/A	10-05382	Kramer Levin Naftalis & Frankel LLP
Evelyn Langbert	1L0119	Claim not determined	Claim not determined	10-05382	Kramer Levin Naftalis & Frankel LLP
James Heller Family LLC	1H0170	N/A	N/A	10-05419	Kramer Levin Naftalis & Frankel LLP
Mark & Carol Enterprises Inc.	1M0209	013453	N/A	10-05432	Kramer Levin Naftalis & Frankel LLP
NTC & CO FBO Mark T. Lederman	1ZR313	013452	N/A	10-05432	Kramer Levin Naftalis & Frankel LLP
CAJ Associates LP	1ZB363	013291	N/A	10-05440	Kramer Levin Naftalis & Frankel LLP
Jewish Association for Services for the Aged	IZA995	011196	N/A	11-02773	Kramer Levin Naftalis & Frankel LLP

Customer	Account No.	Customer Claim No.	Objection Docket No.	Adversary Proceeding	Law Firm
Potamkin Family Investments, Inc.	1P0108	005313	N/A	N/A	Milberg LLP ¹²
Lexie Potamkin	1P0113	005310		N/A	Milberg LLP
Jerry Guberman	1ZR060	010171	382	N/A	Milberg LLP
Judith Rock Goldman	1ZW013	009794	396	N/A	Milberg LLP
Anita Karimian	1ZW019	010930	397	10-04706	Milberg LLP
Albert J. Goldstein u/w FBO Ruth E. Goldstein	1ZA736	009316	398	10-04725	Milberg LLP
Ann Denver	1ZA470	009710	409	N/A	Milberg LLP
Norton A. Eisenberg	1CM296	008937	435	10-04576	Milberg LLP
Harold A. Thau	1ZA467	009522	450	10-04951	Milberg LLP
Harold A. Thau	1ZR261	009523	451	N/A	Milberg LLP
The Aspen Company	1ZA471	009528	452	10-05070	Milberg LLP
Stephen R. Goldenberg	1CM391	010950	460	10-04946	Milberg LLP
Michael Silverstein & Sandra Silverstein J/T WROS	1ZA569	004678	548	N/A	Milberg LLP
Judith G. Damron	1ZA244	001150	574	N/A	Milberg LLP
Onesco International, Ltd	1FR121	009658	668	N/A	Milberg LLP
Amy Thau Friedman	1ZA468	009525	669	N/A	Milberg LLP
Michael H. Ostrove and Lisa Ostrove	1CM360	008589	670	N/A	Milberg LLP
Kenneth D. Bane 2006 Trust	1B0217	010437	671	N/A	Milberg LLP
Lester Kolodny	1K0138	001066	672	10-04515	Milberg LLP
William M. Woessner	1CM275	000802	673	10-04741	Milberg LLP
Michael E. Thau	1ZB275	009524	676		Milberg LLP
Jan Marcus Capper	1EM468	011109	680	10-05197	Milberg LLP
John Denver Concerts, Inc. Pension Plan Trust	1ZB085	009526	687	10-05089	Milberg LLP
Aspen Fine Arts Co.	1EM381	009406	707	10-04335	Milberg LLP
Aspen Fine Arts Co. Defined Contribution Plan	1EM320	009020	708	N/A	Milberg LLP
Potamkin Family Foundation I, Inc.	1P0107	005312	709	10-05069	Milberg LLP
Robert & Lexie Potamkin	1P0097	011264	710	N/A	Milberg LLP
Jerry Guberman Trust Dated 12/23/93	1ZA407	009416	711	N/A	Milberg LLP
Trust U/W/O Harriette Myers	1CM316	009521	712	10-05401	Milberg LLP

¹² The Declaration of Bik Cheema, filed with the Trustee's motion papers, identifies C.V.I.G.V.F. (Lux) Master S.a.r.l., Gary Harnick, and The Harnick Brothers Partnership as Customers represented by Milberg LLP. Milberg LLP does not currently represent these Customers.

Customer	Account No.	Customer Claim No.	Objection Docket No.	Adversary Proceeding	Law Firm
Judith Rock Goldman	1ZA490	009795	867	N/A	Milberg LLP
Anita Karimian	1ZA142	010932	870	10-04706	Milberg LLP
The Marcus Family Limited Partnership	1EM248	002880	872	10-04906	Milberg LLP
Steven V. Marcus Separate Property Marcus Family Trust	1EM469	002882	873	10-04906	Milberg LLP
Diana Melton Trust, Dated 12/5/05	1ZA699	008648	874	N/A	Milberg LLP
Ernest Melton	1ZR043	008647	875	N/A	Milberg LLP
Melton Family LLC	1ZA894	008649	876	N/A	Milberg LLP
Robert Horowitz & Harlene Horowitz as Trustees of the Horowitz Family Trust	1H0084	009145	885	N/A	Milberg LLP
Charles Gabriele	1CM431	009180	886	10-04724	Milberg LLP
Ruth E. Goldstein	1ZA735	009314	912	10-04725	Milberg LLP
Marvin Schlachter	1S0185	010954	913	N/A	Milberg LLP
Trudy Schlachter	1S0293	011044	915	N/A	Milberg LLP
Ruth E. Goldstein	1ZR125	009315	941	10-04725	Milberg LLP
Albert Family Retirement LP	1CM379	006902	1019	N/A	Milberg LLP
2427 Parent Corporation	1T0058	005311	1020	N/A	Milberg LLP
Forecast Designs Retirement Trust	1F0140	008441	1047	N/A	Milberg LLP
June Pollack T/O/D to Keith L. Pollack and Cary G. Pollack	1CM884	000530	1080	N/A	Milberg LLP
Robert Potamkin	1P0089	011263	1777	N/A	Milberg LLP
Joseph Sloves	1S0403	007959	1949	N/A	Milberg LLP
Linda Berger & Howard Berger J/T WROS	1ZB547	005115	1998	N/A	Milberg LLP
Aspen Fine Arts Co. Defined Contribution Plan	1EM414	011426	2029	N/A	Milberg LLP
John Malkovich Pension Plan & Trust	1ZB131	007013	2120	N/A	Milberg LLP
Gary Albert	1CM015	009762	2192	10-04390	Milberg LLP
The Adina Michaeli Revocable Trust	1ZR305	007983	2214	N/A	Milberg LLP
Richard Roth	1R0103	000711	2271	10-05136	Milberg LLP
Michael Roth	1R0102	000722	2272	N/A	Milberg LLP
Jonathan Michaeli	1ZR304	007984	2277	N/A	Milberg LLP
Dr. Lynn Lazarus Serper	1EM243	010195	2346	N/A	Milberg LLP
Laurence Leif	1L0142	001204	2351	10-04601	Milberg LLP
Gerald Blumenthal	1B0166	006832	2366	10-04582	Milberg LLP
Michael Roth	1R0057	000715	2373	N/A	Milberg LLP
Lynda Roth	1R0054	000721	2374	N/A	Milberg LLP

Customer	Account No.	Customer Claim No.	Objection Docket No.	Adversary Proceeding	Law Firm
Diane Sloves as Tstee Under Rev Tst Agreement Dtd 10/13/00 for the Benefit of D Sloves	1S0274	009122	2409	N/A	Milberg LLP
Richard Roth	1R0060	000710	2448	10-05136	Milberg LLP
Florence Roth	1R0047	000712	2449	N/A	Milberg LLP
Delia Gail Rosenberg	1R0250	011095	2509	N/A	Milberg LLP
William M. Woessner & Sheila A. Woessner	1CM191	000450	2766	10-04741	Milberg LLP
Advent Management Corp. Pension Plan and Trust	1ZA466	009527	3266	N/A	Milberg LLP
John G. Malkovich	1ZB237	009529	3601	N/A	Milberg LLP
HHI Investment Trust #2	1-H0076	013546	558	10-05404	Schulte Roth & Zabel LLP
Douglas G. Brown, Trustee of the Douglas G. Brown Revocable Trust	1B0139	015094	2439	N/A	Seeger Weiss LLP ¹³
Elbert R. Brown Trustee UTD 12/29/88	1B0073	002263	2288, 3122	10-05398	Seeger Weiss LLP
Elbert R. Brown Trustee UTD 12/29/88	1B0142	002696	Claim not determined	10-05398	Seeger Weiss LLP
Elizabeth Harris Brown	1B0140	001691	2146	N/A	Seeger Weiss LLP
Lawrence I. Brown and Barbara Brown JTWROS	1B0154	002892	2845	N/A	Seeger Weiss LLP
Viola Brown Trustee UTD 12/29/88	1B0078	002317	2343, 3121	10-05398	Seeger Weiss LLP
Viola Brown Trustee UTD 12/29/88	1B0128	002695	Claim not Determined	10-05398	Seeger Weiss LLP
Katharine Brown Trust	1B0141	004020	1136	N/A	Seeger Weiss LLP
Do Stay, Inc.	1D0040	002266	2820	10-05398	Seeger Weiss LLP
Export Technicians	1ZA794	014260	436	N/A	Seeger Weiss LLP
Lewis R. Franck	1ZA440	015368	733	10-04759	Seeger Weiss LLP
Nur C. Gangji Trustee under Nur C Gangji Trust	1ZA201	008827	854	N/A	Seeger Weiss LLP
Martin Gelman and Michale Dancer JT/WROS	1ZB516	008502	705	N/A	Seeger Weiss LLP
Irving Gerberg	1ZG029	014262	484	N/A	Seeger Weiss LLP

¹³ The Declaration of Bik Cheema, filed with the Trustee's motion papers, identifies SPCP Group LLC and Orthopaedic Specialty Group as Customers represented by Seeger Weiss LLP. Seeger Weiss does not currently represent these Customers.

Customer	Account No.	Customer Claim No.	Objection Docket No.	Adversary Proceeding	Law Firm
Marilyn Cohn Gross	1ZA409	007054	718	N/A	Seeger Weiss LLP
Barbara Harris	1H0092	002704	2753	N/A	Seeger Weiss LLP
Deborah G. Katz and Deborah Katz as Custodian for Alexander and Jason Katz TIC	1KW202	001841	2013	N/A	Seeger Weiss LLP
Andrew Katz and Deborah Katz JT	1KW342	001850	2014	N/A	Seeger Weiss LLP
Jack Kaufman and Phyllis Kaufman JTWROS	1KW142	006571	2221	N/A	Seeger Weiss LLP
Robin I. Logue and Peter Logue as cotrustees of the Logue Family Revocable Trust	1L0329	008883	2389	N/A	Seeger Weiss LLP
Michael Mathias and Stacey Mathias JTWROS	1M0100	002619	2963	N/A	Seeger Weiss LLP
Joseph S. Popkin Revocable Trust Dtd 2/9/06 Robin Popkin Logue	1ZA121	008885	861	10-04712	Seeger Weiss LLP
Paul J. Robinson	1EM299	000469	370	N/A	Seeger Weiss LLP
Barbara Schlossberg	1ZG022	000328	706	N/A	Seeger Weiss LLP
Bernard Seldon (IRA)	1ZR050	006615	453	N/A	Seeger Weiss LLP
Dorothy B. Seldon Revocable Living Trust	1ZA437	006616	696	N/A	Seeger Weiss LLP
NTC & Co. FBO Leila F. Sobin	1S0457	006479	829	N/A	Seeger Weiss LLP
Leila F. Sobin	1EM210	008499	2408	N/A	Seeger Weiss LLP
Jonathan Sobin	1EM208	008501	2469	10-04540	Seeger Weiss LLP
Gary M. Weiss	1CM281	010541	816	10-04241	Seeger Weiss LLP
Leslie Weiss	1CM277	008654	717	10-04241	Seeger Weiss LLP
Melvyn I. Weiss and Barbara J. Weiss JTWROS	1CM241	014261	3039	10-04241	Seeger Weiss LLP
Westben Corp.	1CM336	008931	2185	N/A	Seeger Weiss LLP
NTC & CO. FBO MARSHA PESHKIN (028652)	1ZR312	002628	439	N/A	SNR Denton US LLP ¹⁴
Michael Mann and Meryl Mann	1CM363	009823	461	10-04390	SNR Denton US LLP

¹⁴ In addition to the Customers set forth on this Schedule A, SNR Denton US LLP submits this brief on behalf of each of the defendants in the avoidance actions to which those SNR Denton-represented Customers are parties.

Customer	Account No.	Customer Claim No.	Objection Docket No.	Adversary Proceeding	Law Firm
Barry Weisfeld	1CM584	009817	462	10-04332	SNR Denton US LLP
NTC & CO. FBO STANLEY T MILLER (030438)	1ZR284	007112	538	10-04921	SNR Denton US LLP
NTC & CO. FBO HAROLD J HEIN (88539)	1ZR192	009824	780	10-04861	SNR Denton US LLP
Trust U/W of Bernice L Rudnick, Cecil N Rudnick, ET AL Trustees	1EM351	004485	777	N/A	SNR Denton US LLP
Estate of Helen Shurman	1S0509	008358	741	10-05028	SNR Denton US LLP
ROBERT T SCHOEN MD AND CYNTHIA B FRENCH J/T WROS	1CM305	010156	896	N/A	SNR Denton US LLP
ELLIOT J GOLDSTEIN MD PC MONEY PURCHASE PENSION TRUST	1CM255	007981	895	N/A	SNR Denton US LLP
NTC & CO FBO Donald Snyder	1CM392	000007	894	10-4765	SNR Denton US LLP
S R F PARTNERS	1R0098	011080	892	N/A	SNR Denton US LLP
LI RAM LP	1ZB067	009323	891	10-05236	SNR Denton US LLP
David R Markin 2003 Trust	1C1324	002656	811	10-05224	SNR Denton US LLP
Jennifer Kelman Revocable Trust DTD 12/22/04	1K0150	009821	810	10-05158	SNR Denton US LLP
NTC & CO. FBO MARVIN F BRUCE (46421)	1CM399	013905	812	N/A	SNR Denton US LLP
NEIL REGER PROFIT SHARING KEOGH	1CM534	009791	834	10-05384	SNR Denton US LLP
NTC & CO. FBO SIDNEY HOROWITZ (46854)	1CM408	010209	814	N/A	SNR Denton US LLP
BAM LP	1CM579	009822	815	10-04390	SNR Denton US LLP
ELIZABETH D FRENCH	1CM008	009786	835	10-05424	SNR Denton US LLP
ALVIN GINDEL REVOCABLE TRUST AGREEMENT	1G0396	010207	863	10-04925	SNR Denton US LLP
NTC & Co. FBO Toby Hobish	1H0135	009322	1094	10-05236	SNR Denton US LLP

Customer	Account No.	Customer Claim No.	Objection Docket No.	Adversary Proceeding	Law Firm
DAVINA GREENSPAN LORI FRIEDMAN JT WROS	1ZA194	001974	864	N/A	SNR Denton US LLP
ROBERT T. SCHOEN AND CYNTHIA B. FRENCH	1CM305	010156	1119	N/A	SNR Denton US LLP
ELIZABETH D. FRENCH	1CM008	009786	1118	10-05424	SNR Denton US LLP
NORMA SHAPIRO (IRA)	1S0467	009819	2082	10-04486	SNR Denton US LLP
Robert C. Lapin, IRA	1CM559	007051	2142	N/A	SNR Denton US LLP
Lapin Children LLC c/o Eric Ginsburg	1CM624	006964	2202	10-05209	SNR Denton US LLP
Norma Shapiro Trustee	1S0337	009826	2253	10-04486	SNR Denton US LLP
Sage Realty	1S0316	010157	2297	10-04400	SNR Denton US LLP
Trust U/W/O Philip L. Shapiro	1S0338	009825	2375	10-04486	SNR Denton US LLP
Barbara Berdon	1B0145	010279	2379	10-04415	SNR Denton US LLP
The Rose Gindel Revocable Trust	1G0397	010208	2384	10-04401	SNR Denton US LLP
Laura E. Guggenheimer Cole	1C1258	009721	2744	10-04882	SNR Denton US LLP
Maurice S. Sage Foundation	1S0549	010205	2944	N/A	SNR Denton US LLP
Sage Associates	1S0547	010206	2945	10-04362	SNR Denton US LLP
Sage Associates II	1S0548	010203	2946	N/A	SNR Denton US LLP
Rosenthal Family LLC	1R0108	009487	3014	N/A	SNR Denton US LLP
Elaine Stein Roberts	1L0013	011552	3235	10-05259	SNR Denton US LLP
ELAINE ROBERTS	1E0158	013369	3371	10-05259	SNR Denton US LLP
JOEL GOLDBERG □ PENSION PROFIT SHARING PLAN	1E0158	013370	3371	10-05259	SNR Denton US LLP
ERIC P. STEIN IRA	1E0158	013371	3371	10-05259	SNR Denton US LLP
LENA M. STEIN TRUST	1E0158	013372	3371	10-05259	SNR Denton US LLP
ERIC P. STEIN FBO JONAH M. STEIN 1995 TRUST	1E0158	013373	3371	10-05259	SNR Denton US LLP

Customer	Account No.	Customer Claim No.	Objection Docket No.	Adversary Proceeding	Law Firm
ALEXANDER A. STEIN TRUST	1E0158	013374	3371	10-05259	SNR Denton US LLP
LOREN W. STEIN	1E0158	013375	3371	10-05259	SNR Denton US LLP
MARGOT STEIN	1E0158	013376	3371	10-05259	SNR Denton US LLP
SHARON STEIN	1E0158	013377	3371	10-05259	SNR Denton US LLP
EPIC VENTURES LLC C/O ERIC P STEIN	1E0158	013378	3371	10-04466	SNR Denton US LLP
ROBERT W. RENFIELD LIVING TRUST	1E0158	013380	3371	10-05259	SNR Denton US LLP
MONA AND ALAN FISHER	1E0158	013381	3371	10-05259	SNR Denton US LLP
MARILYN AND EDWARD KAPLAN	1E0158	013382	3371	10-05259	SNR Denton US LLP
GEORGE AND SARAH BERMAN	1E0158	013383	3371	10-05259	SNR Denton US LLP
JOEL GOLDBERG □ PENSION PROFIT SHARING PLAN (NOT FIRST TRUST)	1E0158	013384	3371	10-05259	SNR Denton US LLP
LAUREN GOLDBERG IRA	1E0158	013385	3371	10-05259	SNR Denton US LLP
GREG GOLDBERG IRA	1E0158	013386	3371	10-05259	SNR Denton US LLP
KERRI GOLDBERG IRA	1E0158	013387	3371	10-05259	SNR Denton US LLP
MMRN ASSOCIATES C/O MALCOM SAGE	1M0124	010204	3585	N/A	SNR Denton US LLP
SIDNEY COLE	1CM333	000347		10-04672	SNR Denton US LLP
KELMAN PARTNERS LIMITED PARTNERS, et al.	1K0081	013106	N/A	10-05158	SNR Denton US LLP
IDA FISHMAN REVOCABLE TRUST, PAUL S. SHURMAN	1F0018	N/A	N/A	10-04777	SNR Denton US LLP
JOEL I. GORDON REVOCABLE TRUST U/A/D 5/11/94 and JOEL I. GORDON	1CM201	3015		10-04615	SNR Denton US LLP
HELENE CUMMINGS KARP ANNUITY, and HELENE CUMMINGS KARP	1k0183	009820	N/A	10-05200	SNR Denton US LLP
THE MURRAY FAMILY TRUST, et al.	1CM342	011290	N/A	10-04510	SNR Denton US LLP

Customer	Account No.	Customer Claim No.	Objection Docket No.	Adversary Proceeding	Law Firm
ESTATE OF MARJORIE K. OSTERMAN, et al.	1KW049	9936	N/A	10-04999	SNR Denton US LLP
EUGENE J. RIBAKOFF 2006 TRUST, et al	1R0178	14348	N/A	10-05085	SNR Denton US LLP
America-Israel Cultural Foundation	1CM252	N/A	N/A	10-05058	SNR Denton US LLP